

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUL 13 1999

PATRICK FISHER
Clerk

FERMAN JONES,

Plaintiff-Appellant,

v.

KAREN EVANS,

Defendant-Appellee.

No. 99-6040

(D.C. No. CIV-98-469-M)
(W.D. Okla.)

ORDER AND JUDGMENT *

Before **ANDERSON, KELLY** and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Ferman Jones, appearing pro se and *in forma pauperis*, appeals from the district court's dismissal of his 42 U.S.C. § 1983 claim against his

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

former state public defender. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Jones complains that defendant Karen Evans, in her former role as an Oklahoma County public defender, “manufactured claims, forcing [him to be] sent to the Vinita State Hospital,” and thereby denied him access to the courts. The district court dismissed Jones’ complaint for failure to state a claim upon which relief may be granted because Evans is not a state actor. Potential liability under § 1983 attaches only to persons who are acting under color of state law. The Supreme Court expressly held in Polk County v. Dodson, 454 U.S. 312, 325 (1981), that “a public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” Accordingly, the judgment of the district court is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe
Circuit Judge